

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|---------------------------------|---|----------------------|
| In the Matter of |) | WC Docket No. 11-42 |
| Lifeline and Link Up Reform and |) | |
| Modernization |) | |
| |) | |
| Telecommunications Carriers |) | WC Docket No. 09-197 |
| Eligible for Universal Service |) | |
| Support |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |

**TELRITE CORPORATION EMERGENCY PETITION FOR TEMPORARY
SUSPENSION AND WAIVER**

Pursuant to section 1.3 of the Federal Communications Commission's (Commission's) rules,¹ Telrite Corporation (Telrite or the Company) respectfully submits this Emergency Petition for Temporary Suspension and Waiver (Petition) of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for Telrite's Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands. These subscribers are likely to be affected by network and power outages and significant displacement during and in the wake of Hurricane Irma.² This limited suspension and waiver will protect consumers from having their essential Lifeline service disconnected at a time when it is needed most. Non-willful and unwanted de-enrollment of eligible subscribers from the Lifeline program during this emergency would subject already vulnerable consumers to unnecessary endangerment resulting from the termination of essential communications services to which they have willfully subscribed. Thus, Telrite respectfully

¹ See 47 C.F.R. § 1.3.

² Hurricane Irma is the strongest storm ever recorded in the Atlantic Ocean, and is expected to cause significant damage where it makes landfall, including in Puerto Rico and the U.S. Virgin Islands. See Associated Press, "Trump declares emergency in Florida, Virgin Islands, Puerto Rico ahead of Category 5 Irma" (Sept. 5, 2017) available at <http://abc7.com/weather/trump-declares-emergency-in-fl-ahead-of-irma/2377733/>.

requests that the Wireline Competition Bureau (Bureau)³ expeditiously grant this Petition and issue a temporary suspension and waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 60 days following Hurricane Irma and until such time that the Commission assesses the totality of circumstances in Puerto Rico and the U.S. Virgin Islands and determines that lifting the waiver is in the public interest.

I. BACKGROUND

A. Usage: 47 C.F.R. § 54.407(c)(2) and 47 C.F.R. § 54.405(e)(3)

In its landmark 2012 Lifeline Reform Order, the Commission adopted a requirement that Lifeline subscribers must use the service on a regular basis in order to maintain Lifeline service.⁴ The express purpose of the non-usage rule was to “reduce waste and inefficiencies in the Lifeline program by eliminating support for subscribers who are not using the service.”⁵ Section 54.407(c)(2) was modified in 2016, and currently provides that “usage” can be established through:

- (i) Completion of an outbound call or usage of data;
- (ii) Purchase of minutes or data from the eligible telecommunications carrier [(ETC)] to add to the subscriber’s service plan;
- (iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier’s agent or representative;

³ See 47 C.F.R. § 0.91(b) (authorizing the Bureau to “[a]ct on requests for interpretation or waiver of rules”); see also 47 C.F.R. § 0.291(a) (stating that the Bureau has delegated authority to perform all the functions described in Section 0.91 of the Commission’s rules, including specifically the authority to act on requests for waiver of the rules).

⁴ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, ¶¶ 255-263 (2012) (2012 Lifeline Reform Order).

⁵ See *id.*, ¶ 258.

(iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or

(v) Sending a text message.⁶

Failure to comply with this usage requirement triggers de-enrollment from the Lifeline program after a 30-day non-usage period and a 15-day cure period. Specifically, section 54.405(e)(3) states:

De-enrollment for non-usage. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as “usage” is defined in §54.407(c)(2), for 30 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 15 days’ notice, using clear, easily understood language, that the subscriber’s failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to §54.416.⁷

B. Annual Recertification: 47 C.F.R. § 54.410(f) and 47 C.F.R. § 54.405(e)(4)

The 2012 Lifeline Reform Order also established the requirement that all Lifeline subscribers must recertify their eligibility for the program on an annual basis.⁸ Pursuant to section 54.410(f) of the Commission’s rules, “All eligible telecommunications carriers must re-certify all subscribers 12 months after the subscriber’s service initiation date and every 12 months thereafter,

⁶ 47 C.F.R. § 54.407(c)(2).

⁷ 47 C.F.R. § 54.405(e)(3).

⁸ See 2012 Lifeline Reform Order ¶ 142 (establishing that ETCs must “de-enroll within 30 days Lifeline subscribers who do not respond to the carrier’s or state’s attempts to re-certify the subscriber within a 30-day period.”). See also *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 420 (2016) (expanding the response period from 30 days to 60 days).

except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.”⁹ To complete the recertification, ETCs must query the appropriate state or federal eligibility database, and if the subscriber's eligibility cannot be verified through a database (or if no database is available), the ETC “may obtain a signed certification from the subscriber” affirming his or her continued eligibility.¹⁰

If an ETC is unable to recertify a subscriber, section 54.405(e)(4) provides:

De-enrollment for failure to re-certify. Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by §54.410(f); or who fails to provide the annual one-per-household re-certifications as required by §54.410(f). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber must be given 60 days to respond to recertification efforts. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.¹¹

This rule was designed to “ensure that support is not distributed where subscribers fail to evidence their ongoing eligibility for Lifeline.”¹²

II. REQUEST FOR WAIVER

Telrite supports the Commission's efforts to curb waste, fraud and abuse in the Lifeline program and expends significant time and resources to comply with the Lifeline program rules,

⁹ 47 C.F.R. § 54.410(f)(1).

¹⁰ *Id.* § 54.410(f)(2)(iii).

¹¹ 47 C.F.R. § 54.405(e)(4).

¹² 2012 Lifeline Reform Order ¶ 142.

including the non-usage and recertification requirements. However, neither the Commission's rules nor its orders related to the Lifeline program contemplate potential difficulties that consumers may have in keeping track of Lifeline service usage requirements (including during the "cure" period) or responding to recertification requests during a natural disaster such as Hurricane Irma. Given the magnitude of potential harm to low-income consumers that could result if the non-usage and recertification rules are routinely enforced against Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands during this emergency and the recovery period to follow, Telrite respectfully requests that the Bureau grant a temporary suspension and waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 60 days following Hurricane Irma and until such time that the Commission assesses the totality of circumstances in Puerto Rico and the U.S. Virgin Islands and determines that lifting the waiver is in the public interest.

The Bureau's order should further specify that upon expiration of the suspension and waiver, Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands will be allotted 30 days to meet Lifeline program usage requirements, plus a 15-day cure period, and 60 days to complete recertification.¹³

A. The Bureau Should Waive Sections 54.407(c)(2) and 54.405(e)(3) Because Routine Enforcement of the 30-Day Non-Usage Rule Will Harm and Endanger Consumers

The usage requirement in section 54.407(c)(2) and corresponding de-enrollment provision in section 54.405(e)(3) are measures that routinely result in the de-enrollment and denial of service to low-income consumers who are eligible for and who have subscribed to Lifeline services. These

¹³ Telrite is prepared to disseminate new recertification notices to affected subscribers within five business days of the Bureau's lifting of the requested suspension and waiver.

rules do not contemplate non-routine and potentially life-threatening circumstances such as those that are imminent in Puerto Rico and the U.S. Virgin Islands. Without the requested temporary suspension and waiver of these rules, during and in the recovery period following Hurricane Irma, significant numbers of Lifeline subscribers could be de-enrolled from Lifeline at a time when they need essential communications service the most.¹⁴ Additionally, absent the requested temporary waiver and suspension of these rules, this non-willful and potentially surprising denial of Lifeline benefits may also be compelled despite a consumer's inability to meet program requirements due to service or power outages or other circumstances largely beyond their control.

Moreover, after the storm has passed, these de-enrolled subscribers will be forced to re-apply for Lifeline service, a particularly burdensome task for an individual or family that may also be dealing with the loss of possessions, a home, or worst of all a life. In some cases, re-enrollment may be complicated further by the loss of documents that Lifeline applicants are required to present during the enrollment process to demonstrate eligibility for the program (*e.g.*, three consecutive months of pay stubs) and difficulties that Lifeline providers likely will experience setting up enrollment events in the aftermath of such a storm. In light of the potential harms and the associated endangerment of consumers who may experience a heightened need for their Lifeline service or may be unable to meet program usage and recertification requirements due to circumstances largely out of their control, Telrite respectfully requests that the Bureau expeditiously grant this Petition.

¹⁴ During Hurricane Harvey, calls to 911 by Telrite's subscribers in the Houston area tripled.

B. The Bureau Should Suspend and Waive Sections 54.405(e)(4) and 54.410(f) Because Failure to Complete Recertification During a Natural Disaster Should Not Result in Eligible Consumers Losing Access to Essential Communications Services

During an emergency and natural disaster such as that which is expected to unfold within the next 24-to-48 hours in Puerto Rico and the U.S. Virgin Islands, it is difficult to expect that consumers will be able to perform tasks that may be reasonably expected of them under normal circumstances. Compliance with Lifeline recertification requirements by responding to carrier requests and reminders is easily among the type of task that will be rendered difficult, if not impossible during and in the recovery period following Hurricane Irma.

Indeed, because the vast majority of Lifeline recertifications pursuant to section 54.410(f) are dependent on the consistent availability of communications networks, recertification attempts may be impossible during and in the recovery period following Hurricane Irma. The Commission's preferred method for ETCs to recertify Lifeline subscribers is by "query[ing] the appropriate" eligibility or income database,¹⁵ many of which are administered directly by individual states. In the case of Puerto Rico, substantial numbers of Lifeline subscribers are recertified by querying Puerto Rico's "Programa de Asistencia Nutricional" (PAN) database to verify the subscribers' continued participation in the Supplemental Nutrition Assistance Program (SNAP). However, databases like PAN are likely to become unavailable during power or network outages, like those reasonably expected as a result of Hurricane Irma.¹⁶ Lifeline-eligible

¹⁵ See 47 C.F.R. § 54.410(f)(2).

¹⁶ The director of the Puerto Rico Electric Power Authority predicts that blackouts in parts of Puerto Rico could last between four to six months after Hurricane Irma. See Ephrat Livni, "Hurricane Irma threatens Puerto Rico with 6-month blackouts," Quartz (Sept. 5, 2017) available at <https://qz.com/1069996/hurricane-irma-is-threatening-puerto-rico-with-6-month-blackouts-as-its-utility-is-already-running-on-fumes/>.

subscribers should not have their service cut off simply because a state database goes down during the storm, thereby preventing verification of their eligibility in the short-term.

Communications network availability is equally important for recertification of Lifeline subscribers through direct contact by the ETC. Telrite and others send recertification notices and reminders through a variety of channels, including voice calls, text messages and email. In turn, subscribers typically have multiple options for completing the process, including IVR and online recertification. However, all of these methods depend on the availability of telephone or Internet service, both of which are likely to experience significant disruptions during and in the wake of Hurricane Irma. Thus, it can be reasonably expected that it will be extremely difficult for eligible subscribers in Puerto Rico and the U.S. Virgin Islands to complete recertification during and in the recovery period following Hurricane Irma. The public interest is not served by forcing the de-enrollment of these subscribers from the Lifeline program and requiring them to re-apply after the storm has passed. Rather, the public interest would be served by the Bureau's grant of Telrite's requested suspension and waiver, which would allow subscribers affected by Hurricane Irma to retain their service during and in the recovery period following the storm, and, upon expiration of the suspension and waiver, provide 60 days for them to complete recertification.¹⁷

III. GOOD CAUSE EXISTS TO GRANT THE REQUESTED WAIVER

The Commission may waive any of its rules for good cause shown,¹⁸ and on delegated authority, the Bureau may waive the Commission's rules based on the same standard.¹⁹ Discretion to waive a rule may be exercised where the "particular facts make strict compliance inconsistent

¹⁷ Telrite is prepared to disseminate new recertification notices to affected subscribers within five business days of the Bureau's lifting of the requested suspension and waiver.

¹⁸ See 47 C.F.R. § 1.3.

¹⁹ See 47 C.F.R. § 0.91(b); *see also* 47 C.F.R. § 0.291(a).

with the public interest.”²⁰ Hardship, equity or more effective implementation of overall policy may also be considered.²¹ In short, grant of a waiver request is justified when the public interest would be served by such action.

The Commission consistently has acknowledged the need for low-income consumers to have access to critical communications services during and after a catastrophic natural disaster. In 2005, the Commission established a temporary Lifeline program to provide relief to victims of Hurricane Katrina who were “without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment.”²² And in the aftermath of Hurricane Harvey just last week, Chairman Pai made clear that “the FCC stands ready to help however [it] can.”²³ Telrite respectfully submits that, similar to the effects of Hurricane Katrina and Hurricane Harvey, the potential devastation consumers may face during and after Hurricane Irma provides ample good cause to temporarily suspend and waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) for Lifeline subscribers in Puerto Rico or the U.S. Virgin Islands. Granting this Petition would serve the public interest because it would avoid the

²⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

²¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²² See *Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 02-60, CC Docket No. 02-6, WC Docket No. 03-109, Order, FCC 05-178 (2005). The Commission’s actions following Hurricane Katrina reflect the general truth that “poor people are disproportionately impacted by natural disasters.” See *Addressing the Risk of Waste, Fraud and Abuse in the FCC’s Lifeline Program: Hearing Before the S. Committee on Commerce, Science, and Transportation*, 115th Cong. (Sept. 6, 2017) (Statement of Jessica J. Gonzalez, Deputy Director & Senior Counsel, Free Press and Free Press Action Fund) (internal cites omitted).

Lower-Income Americans (Nov. 2012).


²³ See FCC Press Release, “Chairman Pai Provides Update on Tropical Storm Harvey,” (Aug. 28, 2017).

significant harm and endangerment to consumers that would be caused by de-enrolling Lifeline subscribers in Puerto Rico or the U.S. Virgin Islands simply because they cannot strictly adhere to the Commission's usage or recertification requirements during and in the recovery period following a natural disaster.

IV. CONCLUSION

For the foregoing reasons, the Bureau should grant this Petition and issue a temporary suspension and waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands for a minimum of 60 days following Hurricane Irma and until such time that the Commission assesses the totality of circumstances in Puerto Rico and the U.S. Virgin Islands and determines that lifting the waiver is in the public interest.

Respectfully submitted,

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